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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Calling Party Pays Service Option)
in the Commercial Mobile Radio Service)

WT Docket No. 97-207

COMMENTS OF CELPAGE, INC.

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To: The Commission

COMMENTS OF CELPAGE, INC.

Celpage, Inc. ("Celpage"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits these Comments in response to the FCC's October 23, 1997 Notice of Inquiry ("NOI") in the above-referenced proceeding. In support hereof, the following is respectfully shown:

I. Statement of Interest.

Celpage is the parent company of Pan Am License Holdings, Inc., a Commercial Mobile Radio Service ("CMRS") licensee with facilities throughout the Commonwealth of Puerto Rico and the United States Virgin Islands. Celpage provides one-way paging services, under Parts 22 and 90 of the Rules, through wide-area paging networks that are interconnected to the local telephone network.

Celpage has grown to become the second largest paging company in Puerto Rico, and is one of the largest privately-owned paging companies in the United States. Celpage is also an owner of various paging businesses throughout South America, and is familiar with calling party pays arrangements in those countries. Celpage has been an active participant in many FCC rule making proceedings pertaining to CMRS paging issues

The FCC has initiated this inquiry concerning calling party pays ("CPP") issues, to

determine whether the federal government ought to have a role in the development of this service. Due to its practical experience in this field, Celpage is well-qualified to comment on the advantages and disadvantages of this service option, and the ways in which the FCC can promote this service on an equitable basis for all interested parties. Consequently, Celpage has standing as a party in interest to file formal comments in this proceeding.

II. Summary of the NOI

The FCC has initiated this NOI to determine whether "the wider availability of CPP would enable CMRS providers to more readily compete with wireline services by LECs" NOI at ¶ 1. The FCC wants to examine whether the fact that most CMRS "telephone" subscribers pay for incoming calls "hinders" CMRS service as a "close substitute for wireline telephone service." NOI at ¶ 2. The FCC has not proposed any rules, but, it is requesting information from CMRS providers to determine whether there is anything it can do to promote CPP which will "increase consumer options for local telephone service." NOI at ¶¶ 1, 5.

III. Paging Carriers have Unique CPP Concerns

Far too often, when the FCC addresses "CMRS issues" in rulemaking proceedings, it focuses on two-way CMRS carriers, and ignores or treats as an afterthought the unique interests and requirements of one-way and two-way paging carriers. The NOI is yet another example of this. Although some paging carriers already provide CPP service to interested subscribers, the NOI makes only passing reference to this. For the most part, this agency inquiry treats the subject of CPP as if it is an issue that concerns only cellular and PCS carriers.

The fact is that while one-way and two-way messaging/paging services are not likely to be a *substitute* for local telephone service in the near term (which appears to be the central

concern of this NOI); nevertheless, messaging customers have shown a genuine interest in the CPP service option, and, paging carriers have unique CPP requirements. For instance, the price per call to a paging unit may need to be different than the price for a call to a cellular phone unit. Indeed, CPP prices may vary depending on the type of paging service: calls to a numeric paging unit would presumably be priced lower than a call to an operator-assisted alphanumeric unit.

Fundamentally, if the FCC adopts CPP rules for cellular carriers *but not* for paging carriers, it will place paging carriers at a competitive disadvantage based only on regulatory neglect. It is thus incumbent upon the FCC to promote a fair, competitive environment in which *all* carriers -- local exchange carriers, two-way wireless carriers, and one-way wireless carriers -- are able to efficiently provide this type of service to interested customers at reasonable charges. To accomplish these ends, with which this agency would surely concur, Celpage offers the following suggestions and observations.

IV. LEC Anticompetitive Issues

The FCC should understand that the CPP relationship between a CMRS carrier and a LEC (or interexchange carrier) is markedly different for paging carriers than it is for cellular carriers. A cellular carrier has far greater bargaining strength *viz.* the LEC when negotiating CPP terms than does a paging carrier, for obvious reasons. Right now, the cellular carrier controls charges for both incoming and outgoing calls to a cellular phone. If the cellular carrier doesn't like the CPP terms offered by a LEC, the cellular carrier could simply elect to forgo CPP service in that calling area, keeping all the call revenues for itself. Thus, there is a certain degree of bargaining equality between the cellular carrier and the LEC. For the sake of garnering revenues that it would not collect absent CPP, the LEC will presumably act "reasonably" in its

negotiations with a cellular carrier over the terms and conditions of CPP service.

The same equipoise does not exist between the LECs and paging carriers. Since the LEC owns the network that originates and transports the call to a paging network, the LEC has exclusive control over how those calls will be billed. For instance, if the LEC wants to split the revenue generated by calls placed to CPP paging units "90/10", with 90 cents of every dollar going to the LEC, the paging carrier has only two options: accept those inequitable terms, or, don't market CPP paging services.

The potential for LECs to abuse their monopoly control of the local landline network when "negotiating" CPP terms with paging carriers is exacerbated when a telephone company also owns commercial paging facilities. In that case, the LEC could price the CPP paging service in such a manner as to put non-LEC owned paging companies at a distinct competitive disadvantage. Since the CPP rate is, today at least, referred to by the LECs as a "billing service" rate, the LECs could charge their own paging subsidiaries very little for CPP. The LEC-owned paging carrier could offer "free" paging service to the CPP paging subscriber (once the subscriber buys the LEC-subsidized paging unit); calls placed to that CPP paging unit could be priced substantially lower than the rates available to non-LEC paging carriers who want to provide CPP services.

If a paging carrier were to complain to a state public utility commission about such anti-competitive practices, there is little likelihood that a PUC would be able to order appropriate relief. The LECs would argue that CPP is beyond the PUC's jurisdiction on two grounds: (1) it's a competitive "billing" service, and (2) it's a CMRS service; PUCs have no rate or entry authority over CMRS under Section 332 of the Act. Even if CPP paging services were within

the PUC's jurisdiction, the LECs would likely argue that they don't have to cost-justify "competitive" services.

In an "efficient market", the LEC and the paging carrier would arrive at a mutually beneficial CPP price that would benefit the two carriers, while providing the lowest cost possible to the calling party. In that ideal situation, there would be no need for FCC or PUC intervention in these pricing issues. But, the market is *not* efficient; incumbent LECs still maintain bottleneck control over the local landline network; they have exclusive power to set the rates and the percentages that they will retain for CMRS paging calls charged to calling parties. Indeed, since many LECs have openly refused to even acknowledge that paging carriers are entitled to local transport and call termination compensation, it seems highly unlikely that LECs would suddenly establish a precedent for fair and reasonable pricing with CPP service agreements.

In light of these concerns, the FCC must be particularly vigilant in ensuring that LEC/paging CPP terms and conditions of service are just and reasonable. It is highly likely that paging carriers that are subjected to unjust, unreasonable or discriminatory treatment from LECs in the context of CPP paging services, will have no choice but to turn to the FCC for effective relief. While Celpage believes that CPP rates should be negotiated between the LECs and paging carriers in the first instance, the FCC ought to establish national guidelines to ensure that the paging carrier's share of this CPP revenue, and the rates established for these calls, are just and reasonable. There should be no legitimate legal challenges to the FCC's establishment of fair and reasonable CPP terms, since it has plenary jurisdiction over CMRS rates and terms of service. See, e.g., 47 U.S. C. § 332; and, Iowa Utilities Board v. FCC, Nos. 96-3321, et al., 1997 WL 403401, at 114, n.21 (8th Cir., July 18, 1997), cert. pending.

Because paging prices are already highly competitive (*i.e.*, paging is a very low margin service), and there are numerous competitors in each market, paging customers are notoriously price sensitive. Anticompetitive LEC pricing practices in the context of CPP services will have swift and perhaps fatal consequences for adversely affected paging companies. Even if the FCC does not get involved in the establishment of CPP rates and terms, it ought to be prepared to act swiftly and decisively in response to any paging carrier complaints against LECs that engage in unjust, unreasonable or discriminatory conduct concerning CPP rates, terms, and conditions of service, such as unilateral LEC revisions of CPP rates and revenue splits. The FCC should clearly state that it will issue an order in response to any paging carrier complaint concerning LEC/CPP practices *within five months after the complaint is filed*, pursuant to Section 208(b)(1) of the Act. See 47 U.S.C. § 208(b)(1).

V. Paging Billing Issues

Paging carriers also differ from cellular carriers in this fundamental respect: unlike cellular carriers, paging carriers have no means of recovering revenues generated from CPP calls that are placed from networks other than the local LEC's network. At present, those paging carriers who are providing CPP service in the U.S. are typically doing so only on a local basis. They have a CPP revenue sharing arrangement with their incumbent LEC ("ILEC"), that provides them with revenue for all calls originated by that ILEC that terminate on the CPP customer's paging unit. For any calls originated by a carrier other than that ILEC, the paging carrier would have to either ask the ILEC to "block" those calls, or forego any revenue from those calls. Those options are obviously unacceptable if CPP is to become a viable service option for paging carriers.

Today, paging carriers simply do not have the type of nationwide calling arrangements that cellular carriers employ. Cellular carriers routinely track and bill each other for calls placed by a cellular carrier customer that is "roaming" within another carrier's service area. Thus, for cellular carriers and LECs, it will not be too difficult to track and bill CPP calls placed to a "roaming" cellular customer. Paging carriers, on the other hand, have no central "clearing house" for distant CPP calls; they will need to have inter-carrier agreements between all the IXS, LECs, and two-way CMRS carriers, to track calls placed from outside the local LEC's calling area to a local CPP customer.

The FCC might serve a useful role in promoting these agreements on a nationwide basis. Although the cellular industry was able to create its own co-carrier billing system through voluntary negotiations and agreements, it did that at a time when the cellular industry was in its nascency. There were relatively few cellular carriers extant, and, they all had financial incentives to agree upon one uniform roaming/billing agreement as quickly as possible.

For the paging industry, the situation is entirely different. There are literally thousands of paging carriers licensed throughout the U.S. Since paging customers typically do not "roam" onto another paging carrier's network, there is no nationwide agreement or protocol that would cover the billing and collections problems attendant to CPP paging service (there are inter-carrier facilities sharing agreements between specific paging carriers; but, those agreements would not translate into a billing and collections arrangement that covers CPP traffic). The FCC ought to consider what role it might usefully play in promoting a nationwide CPP cost/revenue sharing arrangement for paging carriers.

VI. Consumer Protection Issues

CPP service for paging carriers raises some novel consumer protection issues. Prior to CPP, most local calls to a paging unit were not billed to the calling party. That is obviously not the case with a CPP service arrangement. Unless the carrier that originates the call warns the calling party of the charge for calling a CPP paging unit, there are likely to be many calling parties who will complain to their phone companies, the PUCs, and the FCC about these new charges.

It is probably not sufficient to expect the LECs to voluntarily install a recorded message warning CPP callers of these charges, or to otherwise make consumers aware of this service. Paging carriers have no control over the LEC network, but, they will suffer from bad customer relations if these potential complaints are not anticipated and addressed. Just as it adopted regulations to warn consumers about privately-owned payphone charges, the FCC ought to adopt uniform nationwide standards to require all originating carriers to warn calling parties about the costs of CPP calls. And, whether or not such standards are adopted, any complaints arising from CPP rates or practices ought to be the responsibility of the originating carrier that handles the call.

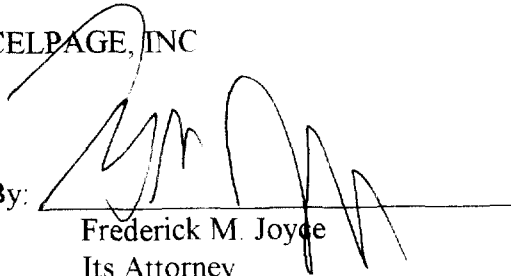
Conclusion

WHEREFORE, the foregoing premises considered, Celpage respectfully requests that the Commission consider adopting rules for the promotion of calling party pays services for paging carriers, in accordance with these Comments.

Respectfully submitted,

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By:


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December 16, 1997

CERTIFICATE OF SERVICE

I, Rhonda M. Johnson, a secretary in the law firm of Joyce & Jacobs, Attys. at Law, L.L.P., certify that on this 16th day of December, 1997, copies of the foregoing Comments of Celpage, Inc. were sent via first class U.S. mail, postage prepaid, to the following:

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